



## OFFICE OF THE INDEPENDENT POLICE AUDITOR

### INVESTIGATED CASES & OFFICER DISCIPLINE IN CITIZEN COMPLAINTS RECEIVED 2005-2009

The Sunshine Reform Task Force recommended that the Independent Police Auditor (IPA) provide specific information on citizen-initiated complaints made about officers employed by the San Jose Police Department (SJPd). After incorporating minor modifications approved by the Rules Committee, the IPA provided to City Council a table disclosing the number and type of citizen-initiated complaints and how many complaints were received about any one officer over a cumulative, five-year period. Identifying information about any individual officer was not disclosed. On March 2, 2010, the Council approved the Rules Committee's recommendation that the IPA prepare updated tables on an annual basis. Attached is the table and narrative for the calendar years 2005-2009. IPA year end reports contain more narrative and single-year data on the items discussed below. The IPA website contains links to the year end reports: <http://www.sanjoseca.gov/ipa/>

Eight hundred seven (807) officers were named or identified in 984 **investigated** citizen-initiated complaints filed from years 2005-2009. Of this group, 393 officers received one complaint; 49% of the total. Officers receiving two complaints totaled 188 (23%).

Between 2005 and 2009, the number of sworn officers employed annually by the SJPd ranged between 1,335 and 1,384.

These 984 **investigated** citizen-initiated complaints do not include:

- Department-initiated cases. A Department-initiated case is an investigation initiated by the Chief of Police alleging a serious violation of

Department policy or a violation of law by an officer (regardless of the existence of a citizen-initiated complaint).<sup>1</sup>

- Complaints received in which the complainant is unable to identify an officer and the officer's identity could not be determined by Internal Affairs.
- Complaint Withdrawn cases. If a complainant affirmatively states that he/she wishes to withdraw the complaint, the officer's name is removed.
- Policy complaints. A policy complaint expresses dissatisfaction with an SJPd policy; it is not a complaint about an individual officer's conduct.
- Cases placed into classifications which do not receive full investigations, namely:
  - Non-misconduct concerns. Per SJPd Duty Manual definition, these matters are not complaints.<sup>2</sup> The classification of non-misconduct concern was implemented in July 2008.
  - Inquiry cases.<sup>3</sup>
  - No Boland cases.<sup>4</sup> This classification is no longer used; these cases were not investigated complaints.
  - Citizen Contacts.<sup>5</sup>

The number of complaints by year is as follows:

Year	Number of complaints received <sup>6</sup>
2005	134
2006	167
2007	253
2008	286
2009	144

<sup>1</sup> There has been an average of 50 department-initiated cases per year over the past five years.

<sup>2</sup> SJPd Duty Manual C1706 defines non-misconduct concern as "During the pre-classification status, if a person alleges or raises an issue that does not rise to the level of violation of Department/City policy, procedure, rules, regulations, or the law, the Department will classify the concern as a Non-Misconduct Concern."

<sup>3</sup> The classification of inquiry was eliminated in July 2008.

<sup>4</sup> Following a U.S. Supreme Court decision in May 2006, this classification is no longer used.

<sup>5</sup> These contacts involved issues that were not directed toward SJPd officers. This classification was eliminated in July 2008.

<sup>6</sup> The 984 complaints in this table do not match exactly with the number of complaints listed in IPA year end reports. Depending on the table or dataset, the complaint numbers in the various IPA reports may reflect a more expanded array of incident types including those in which officers could not be identified.

A complaint is sustained if the investigation discloses sufficient evidence to clearly prove the allegation made by the complainant. If a closed case includes one sustained allegation<sup>7</sup> against any officer<sup>8</sup>, the case is recorded as a “sustained complaint.” The sustained rate is an internal comparison between those complaints which contained at least one sustained allegation and those complaints that did not contain any sustained allegations.

Five-Year Overview of Sustained Rate of External Complaints

Year Closed	# of Complaint Closed	# of Sustained Complaints	Sustained Rate
2005	110	6	5%
2006	116	11	9%
2007	239	14	6%
2008	348	19	5%
2009	291	20	7%

The average sustained rate for complaints filed by members of the public over the period 2005-2009 is 6%. More data on the sustained rate and findings on all allegations in citizen-initiated complaints is provided in IPA year end reports. Typically the sustained rate is higher for department-initiated cases; on March 2, 2010, the Council directed the SJPD to provide similar information about department-initiated cases to the City Council on an annual basis.

It is not easy to compare this data with data from other cities. Complaint processes and reporting standards vary among the different law enforcement agencies in California and across the nation; such variations can have significant impact on the resulting data. For example, there are no uniform titles or definitions for allegations. Different agencies use different criteria and methods of defining, accepting, investigating and closing complaints. Officers in other jurisdictions may have different processes and appeal mechanisms due to differences in state statutes, local ordinances and/or bargaining agreements.

<sup>7</sup> A complaint may contain more than one allegation against a particular officer. There are separate findings on each individual allegation. The “sustained rate” is calculated only on “sustained” findings; it does not include other findings even if those lead to the imposition of corrective action. The sustained rate is based on those cases classified as citizen-issued, conduct complaint, command review and procedural.

<sup>8</sup> A complaint may contain allegations against more than one officer.

Some law enforcement agencies have an oversight mechanism and others do not. Agencies may or may not separate department-initiated cases from complaints filed by a member of the public; typically sustained rates (and the resulting discipline) are higher for department-initiated cases. One should approach comparisons of this data to data from other cities very cautiously.

Judge LaDoris H. Cordell (Ret.)  
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